

Remarks/Arguments:

I. Introduction

The undersigned thanks Examiner Novosad for her thorough review of this application and for the Office action mailed December 22, 2005 (the "Office Action"). The Office Action finalized the election / restriction requirement, rejected claim 13 under 35 U.S.C. §112, also rejected claim 13 under 35 U.S.C. §102, and finally indicated that claims 14-16 would be allowable if rewritten in independent form. Upon entry of the present amendment, claims 13-16 and 21-25 will be pending, with amended claims 13-14, original claims 15-16, and newly added claims 21-25. No new matter has been added by this amendment. In light of the above amendments and the below remarks, the undersigned is of the opinion that all pending claims in this application are in a condition for allowance and respectfully requests the same.

II. §112 Rejections

At page 3 of the Office Action, claim 13 is rejected under 35 U.S.C. §112, second paragraph, as indefinite for failing to particularly point out and distinctly claim the subject matter of the present invention. Upon entry of the present amendment, claim 13 has been amended to recite that "extending the first extension shelf unit with respect to the central shelf unit increases the width or depth of the adjustable shelving assembly and retracting the first extension shelf unit with respect to the central shelf unit decreases the width or depth of the adjustable shelving assembly." The undersigned respectfully submits that this amendment to claim 13 overcomes the §112 rejection.

III. §102 Rejections

At pages 3-4 of the Office Action, claim 13 is rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 6,142,321 to West (the "321 Patent").

To anticipate a claim, a reference must teach each and every element of the claim, either expressly or inherently. See M.P.E.P. § 2131. Here, the '321 Patent does not teach each and every element of claim 13 as amended. The '321 Patent discloses a "shelving apparatus" "having a first set of cross members and a second set of cross members which are adapted to slidably couple with one another to form an adjustable shelf." '321 Patent, at [57]. One of the elements, for example, claimed in claim 13 but not taught by the '321 Patent is a "flexible member" retained between the "upper and lower lips" of the "front member" of the adjustable shelf assembly.

At least because the '321 Patent does not teach such a "flexible member," the undersigned respectfully submits that claim 13, as amended, is not anticipated by the '321 Patent and is in a condition for allowance.

III. Claims 21-25

Newly-added claims 21-25 all depend, either directly or indirectly, from claim 13. As discussed above, claim 13 is patentably distinct from the art cited by the Examiner. As such, the undersigned respectfully submits that claims 21-25 are in a condition for allowance.

Conclusion

For at least the above reasons, the undersigned respectfully requests allowance of claims 13-16 and 21-25 and issuance of a patent containing these claims in due course.

If the Examiner believes that there are any issues that can be resolved via a telephone conference, or that there are any informalities that can be corrected by an Examiner's amendment, please call Michael Bertelson at (404) 815-6291.

No fees are believed due at this time. Nevertheless, the Commissioner is authorized to charge any additional fees that may be due for this Response, or credit any overpayment, to Deposit Account No. 11-0855.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael Bertelson", with a long horizontal flourish extending to the right.

Michael A. Bertelson
Registration No. 54,713

KILPATRICK STOCKTON LLP
Suite 2800
1100 Peachtree Street
Atlanta, Georgia 30309-4530
(404) 815-6500
Attorney Docket No.: 38949/282196